

(916) 445-4572

January 21, 1980

Mr. Dow Bettis  
Plumas County Assessor  
P. O. Box 1016  
Quincy, California 95971

Attention: Mr. Ernest R. Eaton, Jr.

Dear Mr. Eaton:

In your letter of December 27, 1979, you enclosed a copy of one of six identical mining leases on ranches in Plumas County. You asked our opinion if (1) the mining lease constitutes a change in ownership of the mineral rights and (2) if the income from the mining lease can be added to the agricultural income for the purposes of establishing the restricted value. The mining lease provides that:

"Term of Lease. This Lease is granted for an initial term of ten (10) years from and after the date hereof, and for the continuing term as long after the initial term as any mining, development, processing, or beneficiating is being conducted hereunder on a continuous basis. Such operations shall be deemed conducted on a continuous basis unless and until, after the end of the initial term, a period of one hundred eighty (180) consecutive days elapses in which no mining, development, processing, or beneficiating is conducted, excluding, however, periods of force majeure as provided herein. . . ."

In the case of Dabney v. Edwards, 5 Cal. 2d 1, the court concluded an agreement with somewhat similar language constituted a grant of a "determinable fee." A determinable fee is an interest in real property, and in my opinion, constitutes a change in ownership under Section 61(a) of the Revenue and Taxation Code.

The answer to your second question seems to be answered in AH 521-A, pages 19 and 61, copy enclosed for your ready reference.

Very truly yours,

Glenn L. Rigby  
Assistant Chief Counsel

GLR:sfb  
Enclosure